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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re)	Case No. 09-65380-tmr13
)	
Lynn Christine Orchard,)	Adv. Proc. No.
)	
Debtor.)	
)	COMPLAINT FOR VIOLATION OF
)	THE AUTOMATIC STAY,
)	CONTEMPT, AND UNLAWFUL DEBT
)	COLLECTION
<hr/>)	
LYNN ORCHARD,)	
)	JURY TRIAL DEMANDED
Plaintiff,)	
)	11 U.S.C. § 362(k)
v.)	15 U.S.C. § 1692 et seq.
)	ORS 646.639 et seq.
JPMORGAN CHASE BANK, NATIONAL)	
ASSOCIATION, a foreign entity, and)	
ROUTH CRABTREE OLSEN, P.C., a)	
foreign professional corporation.)	
)	
Defendants.)	
<hr/>)	

1.

INTRODUCTION

Mrs. Orchard's mortgage company fails to properly apply her monthly payments.

As a result, its debt collector harasses her and illegally threatens to foreclose on her home, necessitating this lawsuit for fair and just compensation.

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Lynn Orchard (“debtor”), by and through her trial attorney, Michael Fuller, alleges:

2.

JURISDICTION AND THE PARTIES

This is an adversary proceeding brought under 11 U.S.C. §§ 105 and 362(k), the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Oregon Unlawful Debt Collection Practices Act (“OUDCPA”), ORS 646.639 *et seq.*

3.

This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, 1334, 157, and 1367 because the Bankruptcy Code and FDCPA are federal law, true diversity exists between the parties and the amount in controversy is met, and because debtor’s state law claim is so related to the automatic stay claim that they form part of the same case and controversy.

4.

This adversary proceeding is one arising in and related to the above-captioned bankruptcy case, filed under Chapter 13 of Title 11 now open in this Court, case number 09-65380-tmr13. The actions for violating the automatic stay and for contempt are core proceedings under 28 U.S.C. § 157. Pursuant to § 157(e), debtor consents to a jury trial before the Bankruptcy Court.

5.

This is an action for declaratory relief, actual damages, statutory damages, punitive damages, mild sanctions, and attorneys fees and costs brought by debtor against JPMorgan Chase Bank, National Association (“creditor”) and Routh Crabtree Olsen, P.C. (“debt collector”) resulting from ongoing willful violations of the automatic stay and various debt collection laws.

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3 6.

4 Debtor resides in Newport, Oregon and is a “consumer” as defined by the FDCPA at 15
5 U.S.C. § 1692a(3).

6
7 7.

8 Debtor is also a “person” and a “consumer” as defined by the OUDCPA at ORS
9 646.639(1)(h) and (a).

10 8.

11 Creditor operates its national bank throughout Oregon and is a frequent creditor in
12 Oregon chapter 13 bankruptcy cases.

13 9.

14 Creditor is a foreign entity and a “person” as defined by the OUDCPA at ORS
15 646.639(1)(h).

16
17 10.

18 Creditor engages in consumer mortgage loan transactions with Oregonians and is a
19 “commercial creditor” as defined by the OUDCPA at ORS 646.639(1)(c).

20
21 11.

22 Creditor directly, and indirectly through its debt collector, attempts to enforce consumer
23 mortgage loan obligations against Oregonians and is a “debt collector” as defined by the
24 OUDCPA at ORS 646.639(1)(g).

25
26 12.

27 Debt collector operates its debt collection business in Oregon and actively collects
28 consumer debts from Oregonians.

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3 13.

4 Debt collector is a foreign professional corporation and a “person” as defined by the
5 OUDCPA at ORS 646.639(1)(h).

6 14.

7 Debt collector regularly collects creditor’s consumer mortgage loan debts and is a “debt
8 collector” as defined by the OUDCPA at ORS 646.639(1)(g) and the FDCPA at 15 U.S.C. §
9 1692a(6).
10

11 15.

12 Debt collector attempts to collect debtor’s alleged consumer mortgage obligation to
13 creditor constituting a “debt” as defined by the OUDCPA at ORS 646.639(1)(e) and the FDCPA
14 at 15 U.S.C. § 1692a(5).
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3 16.

4 **FACTUAL ALLEGATIONS**

5 Prior to filing for chapter 13 bankruptcy protection, debtor owed a consumer mortgage
6 debt to creditor.

7
8 17.

9 Debtor filed for chapter 13 bankruptcy protection in this Honorable Court on October 2,
10 2009.

11 18.

12 Debtor listed creditor on her schedule of secured creditors.

13 19.

14 Creditor received actual notice of the automatic stay in debtor's bankruptcy case,
15 including a court-generated notice from the bankruptcy court.
16

17 20.

18 The court-generated notice warned creditor that attempting to collect from debtor in
19 violation of the automatic stay may result in penalties.
20

21 21.

22 The court-generated notice informed creditor that debtor was represented by an attorney
23 and provided contact information for debtor's attorney.
24

25 22.

26 On or around October 2009 creditor received actual written notice of debtor's chapter 13
27 plan.
28

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1
2
3 23.

4 Debtor's chapter 13 plan proposed to retain her home and cure any mortgage arrearages
5 with creditor.

6 24.

7 On or around December 2009 creditor received actual written notice of the order
8 confirming debtor's chapter 13 plan.

9
10 25.

11 On or around June 11, 2010, creditor, through its predecessor in interest, Chase Home
12 Finance, LLC, filed for relief from the automatic stay in debtor's bankruptcy case.

13 26.

14 On or around December 8, 2011, creditor again filed for relief from the automatic stay in
15 debtor's bankruptcy case.

16 27.

17 On or around January 12, 2012, creditor filed a withdrawal of its second motion for relief
18 from the automatic stay.

19 28.

20 Creditor never received relief from the automatic stay in debtor's bankruptcy case.

21 29.

22 After receiving actual written notice of debtor's bankruptcy case and the automatic stay,
23 creditor and its debt collector willfully harassed debtor in an attempt to collect on a claim arising
24 before the commencement of her bankruptcy case.

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3 30.

4 Specifically, creditor fails to properly apply debtor's mortgage payments to her loan
5 balance.

6 31.

7 Creditor and its debt collector harass debtor in writing at her home.

8 32.

9
10 Creditor and its debt collector harass debtor by representing that her credit could be
11 damaged and disrupted if she does not act immediately.

12 33.

13 Creditor and its debt collector harass debtor by representing that foreclosure proceedings
14 against her property have begun.

15 34.

16
17 Creditor and its debt collector contact debtor directly despite actual knowledge she is
18 represented by an attorney.

19 35.

20
21 Creditor and its debt collector represent intent to collect from debtor outside the
22 parameters of the order confirming her chapter 13 plan.

23 36.

24 Creditor and its debt collector represent to debtor that she may be subject to illegal late
25 charges and interest.

26 ///

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3 37.

4 Debt collector fails to clearly inform debtor whether it is attempting to collect a debt.

5 38.

6 Creditor and debt collector's direct involvement in debtor's bankruptcy case provide
7 them good reason to know their collections activities are illegal.

8 39.

9 Creditor and debt collector's representations above are false and threaten to enforce
10 remedies they know and should know are illegal.

11 40.

12 As a direct and proximate result of creditor and debt collector's choices, debtor suffers
13 actual damages, including severe ongoing worry, anxiety and other negative emotions to be
14 proven at trial.
15
16

17 41.

18 As a direct and proximate result of creditor and debt collector's choices, debtor suffers
19 actual damages in the form of time spent and expenses including fees and costs to remedy
20 creditor and debt collector's contempt.
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42.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(WILLFUL VIOLATION OF THE AUTOMATIC STAY)

(11 U.S.C. § 362(k))

Debtor incorporates the above by reference.

43.

Creditor turned debtor's account over to its debt collector for collections despite ample notice of the automatic stay, constituting a willful violation of 11 U.S.C. § 362.

44.

Creditor's willful collection activities violate the automatic stay and provide it an unfair advantage over other creditors that choose to responsibly conduct themselves within the bounds of the automatic stay and order confirming plan.

45.

Debtor is entitled to and so seeks punitive damages against creditor under § 362(k) so it may become profitable for creditor to follow the rules and abide by the orders of this Court in the future.

46.

Debtor is injured as a result of creditor's willful violations, and so is entitled to actual damages, punitive damages, declaratory relief that creditor violated the automatic stay, and attorneys fees and costs to remedy the contempt pursuant to 11 U.S.C. § 362(k).

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3 47.

4 **SECOND CLAIM FOR RELIEF**
5 (COMPENSATORY CIVIL CONTEMPT)

6 (11 U.S.C. § 105)

7 Debtor incorporates the above by reference.
8

9 48.

10 Creditor fails to properly apply debtor's mortgage payments and willfully carries on
11 direct collection activities despite actual notice of the automatic stay and actual participation in
12 the bankruptcy case. Creditor and its debt collector are in direct violation of this Court's orders
13 and should held in contempt pursuant to 11 U.S.C. § 105 and pursuant to this Court's inherent
14 powers.
15

16 49.

17 **THIRD CLAIM FOR RELIEF**

18 (OUDCPA)

19 (ORS 646.641)

20 Debtor incorporates the above by reference.
21

22 50.

23 Creditor and debt collector injured debtor through their willful unlawful collection
24 practices as detailed above, violating the OUDCPA, specifically ORS 646.639(2)(c), (k), (m),
25 and (n).
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51.

As a result of creditor and debt collector's willful unlawful collection practices, debtor is entitled to the greater of actual damages or \$200, punitive damages, reasonable attorneys fees and costs, and declaratory relief pursuant to ORS 646.641.

52.

FOURTH CLAIM FOR RELIEF

(FDCPA)

(15 U.S.C. § 1692k)

Debtor incorporates the above by reference.

53.

Debt collector injured debtor through its willful unlawful collection practices as detailed above, violating the FDCPA, specifically 15 U.S.C. §§ 1692c, d, e, and f.

54.

As a result of debt collector's willful unlawful collection practices, debtor is entitled to the greater of actual damages or \$1,000 and reasonable attorneys fees and costs pursuant to 15 U.S.C. § 1692k.

55.

Debtor is entitled to and so demands a jury trial on the OUDCPA and FDCPA claims.

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2 **WHEREFORE**, debtor request judgment against creditor and debt collector as follows:

3 A. Declaratory judgment that creditor and debt collector's choices willfully violated the
4 automatic stay;

5
6 B. An Order holding creditor and debt collector in contempt;

7 C. An award of mild sanctions against creditor and debt collector;

8 D. An award of actual damages against creditor and debt collector;

9 E. An award of statutory damages against creditor and debt collector;

10 F. An award of punitive damages against creditor and debt collector;

11 G. An award of expenses, including reasonable attorneys fees and costs against creditor
12 and debt collector;

13
14 H. For such other and further relief as this Court may deem just and proper.
15

16
17 Dated: December 21, 2012

18 /s/ Michael Fuller

19 Michael Fuller, Oregon Bar No. 09357
20 Trial Attorney for Debtor
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